

Special Civil Application No 1325 of 1983

Date of decision: 13th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

GADA KORSHI MULJI

vs

DY.COLLECTOR

Appearance:

Shri A.K.Mankad, Advocate, for the Petitioners.

Shri D.N.Patel, Assistant Government Pleader, as instructed by Messrs Purnanand & Company, for Respondents Nos.1 and 4.

Respondent No.2 served.

Shri Y.S.Mankad, Advocate, for Respondent No.3.

Coram : MR.JUSTICE A.N.DIVECHA

13th February 1996

ORAL JUDGEMENT

The order passed by the Deputy Collector of Anjar (respondent No.1 herein) some time in August 1982 assigning one

parcel of land bearing survey No.1169 (Khalvad) admeasuring 48 acres 14 gunthas situated in the sim of village Lakadia (the disputed land for convenience) as a village site for the purpose of disposal to homeless backward class persons on certain terms and conditions is under challenge in this petition under Article 226 of the Constitution of India. The petitioners have also challenged the order passed by the Taluka Development Officer at Bhachau (respondent No.2 herein) on 25th August 1982 pursuant to the order passed by respondent No.1 some time in August 1982.

2. The facts giving rise to this petition move in a narrow compass. It appears that the disputed land was shown as Government land in the revenue records. It appears that village Lakadia was an inami village and on abolition of the inam under the Kutch Inami Abolition Act it vested in the Government and compensation on account of abolition of such inam and such vesting in the Government under section 13 thereof was also paid. It was in the sim of village Lakadia. It appears that certain homeless backward class people demanded allotment of small parcels of land in their favour. It therefore became necessary to assign the disputed land as a village site. It appears that respondent No.1 made an inquiry in that regard and in the process the Sarpanch of the Gram Panchayat of Lakadia (respondent No.3 herein) was also consulted. Thereafter, by his order passed some time in August 1982, respondent No.1 assigned the disputed land as a village site for the purpose of village Lakadia. Its copy is at Annexure-D to this petition. Pursuant thereto, respondent No.2 passed the necessary order on 25th August 1982. Its copy is at Annexure-E to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the legality and validity of the orders at Annexures-D and E to this petition.

3. It is the case of the petitioners that they are cultivators and residing in village Lakadia and the disputed land was cultivated by several cultivators in that village in their individual capacity on the basis of their ownership rights. It is thus clear that the petitioners along with several other cultivators in that village claim ownership rights over small areas of land from the disputed land stated to be in their possession. Whether or not they are such owners can be decided on the basis of some factual position to be established on record. It can be done by means of adducing the necessary documentary and oral evidence in that regard. This court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India would be disinclined to examine or investigate into disputed questions of fact. The proper remedy for the purpose available to the petitioners would be an appropriate proceeding before an appropriate authority under section 37 of the Bombay Land Revenue Code, 1879 or institution

of a suit before the competent court, as advised, for establishment of their ownership rights over the area of land from the disputed land alleged to be in their possession. This court will be disinclined to examine or investigate into such disputed questions of fact.

4. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs. The interim relief stands vacated.

5. At the oral request of learned Advocate Shri Mankad for the petitioners, the interim relief is ordered to continue for a period of three months from today with a view to enabling the petitioners to challenge this judgment of mine by means of an appropriate proceeding or for challenging the impugned orders at Annexures-D and E to this petition by means of an appropriate proceeding before an appropriate forum or by institution of a suit before the competent court as advised.

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